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No. 14-770

In the Supreme Court of the United States

BANK MARKAZI, AKA THE CENTRAL BANK OF IRAN,
PETITIONER

v.

DEBORAH PETERSON, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

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QUESTION PRESENTED

The Iran Threat Reduction and Syria Human Rights Act of 2012, 22 U.S.C. 8701 *et seq.*, identifies certain "financial assets" in which the Central Bank of Iran has a security entitlement and that were the subject of post-judgment enforcement proceedings in the United States District Court for the Southern District of New York at the time the provision was enacted. 22 U.S.C. 8772(b). The statute makes those assets "subject to execution or attachment in aid of execution in order to satisfy" certain terrorism-related judgments against the Islamic Republic of Iran, provided that the assets are (1) "held in the United States for a foreign securities intermediary doing business in the United States," (2) blocked assets, and (3) "equal in value to a financial asset" held abroad by the securities intermediary on behalf of the Central Bank of Iran. 22 U.S.C. 8772(a)(1). The question presented is:

Whether 22 U.S.C. 8772 violates the separation of powers.

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INTEREST OF THE UNITED STATES

This case concerns the constitutionality of Section 502 of the Iran Threat Reduction and Syria Human Rights Act of 2012, 22 U.S.C. 8772, which makes certain assets subject to attachment in aid of execution on terrorism-related judgments against Iran. At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage of this case.

STATEMENT

1. a. The Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1330, 1441(d), 1602 *et seq.*, defines the scope of the immunity of a foreign state from suit. The FSIA provides that a "foreign state" and its agencies and instrumentalities are "immune from the jurisdiction" of federal and state courts except as provided by certain international agreements

and by the exceptions to immunity set forth in Sections 1605-1607. 28 U.S.C. 1604; see 28 U.S.C. 1605-1607. One exception to foreign sovereign immunity, known as the "terrorism exception," applies to suits seeking money damages for "personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, [or] hostage taking," if the foreign state was designated "as a state sponsor of terrorism" by the Secretary of State, either "at the time the act occurred" or later "as a result of such act." 28 U.S.C. 1605(a)(7) (2000); see 28 U.S.C. 1605A (revising and recodifying the terrorism exception).

b. The FSIA also establishes a general rule that "the property in the United States of a foreign state" is "immune from attachment arrest and execution," 28 U.S.C. 1609, with certain exceptions. 28 U.S.C. 1609-1611. As relevant here, Section 1610 makes certain property of foreign states and their agencies and instrumentalities subject to attachment to satisfy terrorism-related judgments. 28 U.S.C. 1610(a)(7) and (b)(3). Under Section 1611(b)(1), however, the property "of a foreign central bank or monetary authority held for its own account" is immune from attachment, including to satisfy terrorism-related judgments, unless the bank "or its parent foreign government" has explicitly waived its immunity. 28 U.S.C. 1611(b)(1).

c. Victims of state-sponsored terrorism who have obtained judgments against a foreign state under the FSIA's terrorism exception have often faced practical and legal difficulties in enforcing their judgments. Congress has enacted a number of statutes designed in part to facilitate enforcement of those judgments.

Enforcement of terrorism-related judgments takes place against the backdrop of the sanctions programs to which the property in the United States of a state sponsor of terrorism typically is subject. See, *e.g.*, International Emergency Economic Powers Act (IEEPA), Pub. L. No. 95-223, Tit. II, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Trading with the Enemy Act (TWEA), ch. 106, 40 Stat. 411 (50 U.S.C. App. 1 *et seq.*). Those programs authorize the President to "block" particular assets subject to the United States' jurisdiction. In general, blocking programs that target governments broadly prohibit transactions concerning property of the targeted foreign government in the absence of Executive Branch authorization.

Congress has enacted several statutes designed to facilitate execution against property that is subject to a blocking regime to satisfy terrorism-related judgments. In 1998, Congress authorized execution against blocked property in which a foreign state has an interest to satisfy any judgment obtained under the terrorism exception "[n]otwithstanding any other provision of law, including" IEEPA, TWEA, and other sanctions programs. 28 U.S.C. 1610(f)(1)(A). Congress authorized the President to "waive" that authorization "in the interest of national security," 28 U.S.C. 1610 note, and the President exercised that authority. Presidential Determination No. 99-1, Memorandum on Blocked Property of Terrorist-List States, 34 Weekly Comp. Pres. Doc. 2088 (Oct. 21, 1998).

Next, in Section 201 of the Terrorism Risk Insurance Act of 2002 (TRIA), Pub. L. No. 107-297, 116 Stat. 2337, Congress authorized plaintiffs with judgments obtained under the terrorism exception in the FSIA to execute against "the blocked assets of [a] terrorist

party (including the blocked assets of any agency or instrumentality of that terrorist party)." § 201(a) and (d)(4), 116 Stat. 2337, 2340. TRIA thus expanded the universe of property that can be attached to satisfy a terrorism-related judgment by providing that judgment creditors may attach the blocked assets of a juridically separate agency or instrumentality in order to satisfy a judgment against the foreign state itself. See *First Nat'l City Bank* v. *Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 626-628 (1983) (ordinarily an instrumentality's assets may not be attached to satisfy a claim against the foreign state).

In 2008, Congress amended the FSIA to expand plaintiffs' ability to enforce a terrorism-related judgment against assets of a foreign state. As amended, Section 1610(g)(1) renders the property (whether or not blocked) of a foreign state agency or instrumentality non-immune with respect to execution on a judgment against the foreign state. Any such attachment must, however, occur "as provided in this section"—that is, in accordance with the other requirements of Section 1610. 28 U.S.C. 1610(g)(1); see National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 1083(a), (b)(1)(A)(iii), and (3)(D), 122 Stat. 338-341.

In 2012, while this case was pending, Congress again rendered additional blocked assets subject to attachment by enacting the Iran Threat Reduction and Syria Human Rights Act of 2012, 22 U.S.C. 8701 *et seq.* See 22 U.S.C. 8772; p. 7, *infra*.

2. a. Respondents are more than 1000 victims of terrorist attacks sponsored by Iran, or the representatives and surviving family members of such victims. Pet. App. 52a-53a. They have obtained "billions of

dollars in judgments against Iran" under the FSIA's terrorism exception to foreign state immunity. *Id.* at 53a. Respondents registered their judgments in the United States District Court for the Southern District of New York, where they sought to execute their judgments on any property of Iran they could identify within that jurisdiction. *Id.* at 53a-54a; see 28 U.S.C. 1963.

Respondents proceeded against approximately $1.75 billion in bonds (the bond assets) held in a New York account at Citibank, N.A., on behalf of petitioner. Pet. Br. 9-10; Pet. App. 2a. Petitioner "is the Central Bank of Iran, which is wholly owned by the Iranian government." *Ibid.* Petitioner has a "beneficial interest" in the bond assets, which are held by Citibank, N.A., in an omnibus account for Clearstream Banking, S.A., a financial intermediary in Luxembourg. *Ibid.* Clearstream maintains the Citibank account in part for Banca UBAE S.p.A., an Italian bank, whose customer is, in turn, petitioner. *Ibid.*

In 2008, when some respondents learned of the existence of the bond assets, they obtained from the district court a writ of execution, which restrained the assets. Pet. App. 62a. At the outset of the litigation, the bonds had not yet matured, so the assets took the form of security entitlements. Pet. Br. 9-10 & n.1. Clearstream argued that respondents could not execute against the bond assets under New York state law. See Pet. App. 106a; note 7, *infra*. Under the New York Uniform Commercial Code, "[t]he interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained." N.Y. U.C.C. Law § 8-112(c)

(McKinney 2002). Because Clearstream did not maintain an account in petitioner's name, the district court agreed with Clearstream that the bond assets could not be attached under Section 8-112(c). Pet. App. 126a.

In 2010, respondents filed amended complaints against petitioner, Clearstream, Citibank, and UBAE, seeking turnover of the assets. Pet. App. 3a; see *id.* at 62a-63a. Citibank filed an interpleader action, and the district court consolidated the various proceedings concerning the bond assets. *Id.* at 15a.

In 2012, while the consolidated proceedings were pending, the President issued Executive Order 13,599, which blocked "[a]ll property and interests in property of the Government of Iran, including the Central Bank of Iran, that are in the United States." Exec. Order No. 13,599, 3 C.F.R. 215 (2013). The President determined that the blocking action was appropriate in light of "the deceptive practices of [petitioner] * * * to conceal transactions of sanctioned parties."[1] *Ibid.* The bond assets were among those blocked by the Executive Order. Once the bond assets were blocked, respondents sought summary judgment on

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[1] Upon learning that Clearstream maintained securities on behalf of petitioner that were custodized and located in the United States, the Treasury Department's Office of Foreign Assets Control initiated an investigation of Clearstream for potentially exporting financial services from the United States to Iran in violation of the Iranian Transactions and Sanctions Regulations (ITSR), 31 C.F.R. Pt. 560. See *Clearstream Banking, S.A. Settles Potential Liability for Apparent Violations of Iranian Sanctions* 1 (Jan. 23, 2014), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20140123_clearstream.pdf. Clearstream "exported custody and related services from the United States to [petitioner] in apparent violation of the ITSR" and paid approximately $152 million to settle its "potential civil liability." *Ibid.*

their claim for execution under TRIA, which permits execution against "the blocked assets of any agency or instrumentality of th[e] terrorist party" to satisfy a judgment under the FSIA's terrorism exception. § 201(a), 116 Stat. 2337; Pet. App. 3a. Petitioner argued (Br. 11) that the bond assets were not subject to execution under TRIA because they were not petitioner's property under Section 8-112 of the New York U.C.C., and thus were not assets "of" an agency of a terrorist party under TRIA.

While that motion was pending, Congress enacted Section 502 of the Iran Threat Reduction and Syria Human Rights Act of 2012. 22 U.S.C. 8772; Pet. App. 3a-4a. Section 8772(a)(1) provides that, "notwithstanding any other provision of law, and preempting" state law, a financial asset that is a blocked asset held in the United States for a foreign securities intermediary doing business in the United States, and equal in value to a financial asset of Iran, "shall be subject to execution to the extent of any compensatory damages awarded against Iran for damages for personal injury or death caused by an act of [terrorism]." 22 U.S.C. 8772(a)(1). The statute requires the court, before permitting execution against such assets, to "determine whether Iran holds equitable title to, or the beneficial interest in, the assets," and also "that no other person possesses a constitutionally protected interest in the assets." 22 U.S.C. 8772(a)(2). By its terms, the statute applies only to the bond assets that were subject to restraining orders issued by the district court in this case, so long as they remain restrained. 22 U.S.C. 8772(b) and (c)(2).

b. The district court granted partial summary judgment to respondents, holding that the bond assets

were subject to turnover under Section 8772 and TRIA.[2] Pet. App. 52a-124a. As required by Section 8772, the district court determined that "[o]n this record and as a matter of law," only petitioner had a beneficial interest in the bond assets. *Id.* at 111a-112a.

The district court rejected petitioner's contention that Section 8772 violates the separation-of-powers principles explicated in *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1872), concluding that Congress had not "dictated specific factual findings in connection with a specific litigation." Pet. App. 114a-115a.

3. The court of appeals affirmed. Pet. App. 1a-12a. On appeal, petitioner "concede[d] that the statutory elements for turnover of the assets under [Section] 8772 have been satisfied." *Id.* at 2a.

Petitioner argued, however, that Section 8772 violates the separation of powers. Pet. App. 2a. The court of appeals rejected that argument. *Id.* at 7a-10a. The court acknowledged that, under *Klein*, *supra*, Congress impermissibly usurps the courts' adjudicative role under Article III of the Constitution if it directs the outcome of a case under existing law. Pet. App. 8a. But, the court continued, Congress may constitutionally alter the law governing a pending case, even if doing so changes the outcome of the case. *Id.* at 8a-9a (discussing *Robertson* v. *Seattle Audubon Soc'y*, 503 U.S. 429 (1992)). The court concluded that Section 8772 "retroactively changes the law applicable in this case, a permissible exercise of legislative authority." *Id.* at 8a.

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[2] After the district court entered its order, the Treasury Department issued a license authorizing transfer of the assets to a trust account. Pet. App. 22a-23a.

SUMMARY OF ARGUMENT

I. This Court has long held that Congress has broad authority to alter the law applicable to pending cases. See *United States* v. *Schooner Peggy*, 5 U.S. (1 Cranch) 103 (1801). In a series of decisions beginning with *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1872), the Court has made clear that Congress does not invade the courts' adjudicative function under Article III unless it purports to direct a particular result in a pending case under existing law. The Court has also established that a statute does not infringe upon the judicial power simply because it creates standards that make a particular result virtually certain. See *Robertson* v. *Seattle Audubon Soc'y*, 503 U.S. 429, 437 (1992); *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1856) (*Wheeling Bridge*).

The critical question under Article III is therefore whether Congress has left any adjudicatory function for the courts to perform, or whether it has instead improperly directed a particular application of existing law. That is equally true when Congress alters the legal standard governing a single pending case. This Court has upheld legislation that altered the law for a single identified case, as well as statutes that had the purpose and effect of altering the law for a single case. See *Pope* v. *United States*, 323 U.S. 1, 10-11 (1944); *Wheeling Bridge*, *supra*.

Even if legislation directed to a single case might in some contexts raise Article III concerns, such concerns are not present in the context of claims against foreign sovereigns and their assets. In furtherance of their exclusive authority over the Nation's foreign relations, the political Branches have long exercised

extensive control over claims against foreign states and the disposition of foreign-state assets subject to United States jurisdiction—including by determining the law governing a single case. The Executive Branch historically made case-specific determinations of foreign sovereign immunity that were binding on the courts, and it has settled or extinguished the claims of U.S. citizens against foreign sovereigns. The political Branches also have long regulated specific foreign-state assets in the United States, including by blocking them, vesting title in the United States, allowing attachment, or ordering transfer to compensate U.S. citizens for claims against foreign states. See generally *Dames & Moore* v. *Regan*, 453 U.S. 654 (1981). Those actions have never been understood to invade the Article III judicial power.

II. Section 8772 is a valid exercise of Congress's authority to regulate the disposition of specific foreign-state assets subject to the jurisdiction of the United States. The statute alters the law applicable to Iran's claim of sovereign immunity, as well as the law governing the circumstances under which particular property in which Iran has an interest may be attached to satisfy judgments against Iran. Section 8772 thus falls well within the political Branches' established authority over foreign sovereign immunity and foreign sovereign assets.

In addition, Section 8772 does not direct a result under existing law. It created a new legal standard governing the attachment of the bond assets, but left to the court the authority to make the predicate determinations on which Section 8772 conditioned any right to attachment.

ARGUMENT

I. CONGRESS MAY VALIDLY ALTER THE LAW GOVERNING FOREIGN SOVEREIGN ASSETS SUBJECT TO UNITED STATES JURISDICTION

A. Article III Permits Congress To Change The Law Applicable To A Pending Case, So Long As It Does Not Dictate The Outcome

1. It is well established that Congress may enact a statute that changes the law applicable to pending cases. As Chief Justice Marshall explained in *United States* v. *Schooner Peggy*, 5 U.S. (1 Cranch) 103 (1801), "if subsequent to the judgment and before the decision of an appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied." *Id.* at 110; *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 226 (1995). This Court has therefore routinely enforced statutes that alter the law governing pending cases. See, *e.g.*, *Robertson* v. *Seattle Audubon Soc'y*, 503 U.S. 429, 438-439 (1992); *United States* v. *Sioux Nation of Indians*, 448 U.S. 371, 391-395 (1980); *Schooner Peggy*, 5 U.S. (1 Cranch) at 110.

Congress's alteration of the governing law, without more, does not invade the courts' judicial function under Article III. While the court "must apply" a retroactive law in a pending case, the court retains authority to construe the statute, to apply it to the facts before it, to make any necessary factual determinations, and to enter judgment for one party or the other. *Plaut*, 514 U.S. at 226; see *id.* at 218 (Congress, consistent with Article III, may "set out" new "substantive legal standards for the Judiciary to apply."); *Robertson*, 503 U.S. at 438; *Pope* v. *United States*, 323 U.S. 1, 10-11 (1944). Other constitutional provisions—

including the prohibitions on singling out persons for punishment, taking property without just compensation, and arbitrarily applying a statute retroactively in a manner that does not comport with due process—instead serve as the primary restrictions on Congress's ability to change the law applicable to pending cases. See U.S. Const. Art. I, § 9, Cl. 3 (prohibiting ex post facto laws and bills of attainder); Amend. V (Just Compensation and Due Process Clauses).

2. While Article III permits Congress to alter the law governing a pending case, this Court held in *United States* v. *Klein* that Congress invades the judicial function when it instead purports to direct a particular result in a pending case under existing law. 80 U.S. (13 Wall.) 128, 146-147 (1872). *Klein* concerned a statute enacted in response to the Court's decision in *United States* v. *Padelford*, 76 U.S. (9 Wall.) 531, 542-543 (1870), which had held that receipt of a Presidential pardon constituted proof of loyalty for purposes of a statute providing for return of property seized by Union military authorities. Congress purported to overturn *Padelford* by enacting a statute directing the courts to treat receipt of a pardon as conclusive evidence of the claimant's disloyalty and to dismiss any pending claim for recovery of property, and any appeal of a judgment in favor of the claimant, based on a pardon. Act of July 12, 1870, ch. 251, 16 Stat. 235; see *Klein*, 80 U.S. (13 Wall.) at 132-134, 143-144. This Court held that "Congress ha[d] inadvertently passed the limit which separates the legislative from the judicial power." *Klein*, 80 U.S. (13 Wall.) at 147. The statute at issue, the Court explained, "prescribe[d] a rule for the decision of a cause in a particular way" and could not be sustained "without allowing one par-

ty to the controversy to decide it in its own favor." *Id.* at 146.

Subsequent decisions have clarified *Klein*'s scope in two respects. First, the Court has explained that *Klein* applies only when Congress enacts a statute that directs a particular result under governing law. In *Robertson*, the Court upheld legislation that was enacted "[i]n response to" litigation challenging certain government timber-harvesting plans under various environmental statutes, and that "replaced" the standards set forth in those statutes. 503 U.S. at 433, 437. In sustaining the legislation, the Court reasoned that Congress permissibly altered the governing standards and did not either direct "findings or results under old law" or "instruct the courts whether any particular timber sales would violate" the new standards. *Id.* at 438-439. Thus, "whatever the precise scope of *Klein* * * * , later decisions have made clear that its prohibition does not take hold when Congress 'amend[s] applicable law.'" *Plaut*, 514 U.S. at 218 (quoting *Robertson*, 503 U.S. at 441).

Second, this Court's decisions indicate that *Klein* does not prevent Congress from amending the law in a manner that makes a particular outcome virtually certain, so long as Congress does not "prescribe a rule for decision that [leaves] the court no adjudicatory function to perform." *Sioux Nation*, 448 U.S. at 392. In *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1856), for instance, the Court upheld a statute that declared a bridge to be a "lawful structure[]" in response to an earlier decision holding that it was a nuisance and issuing an injunction. *Id.* at 429. The new statute established that the bridge was not a nuisance, and the Court accordingly declined to

enforce the existing injunction. Despite that significant impact on the outcome, the *Klein* Court reaffirmed that the *Wheeling Bridge* statute did not direct a result in the case, explaining that "the court was left to apply its ordinary rules to the new circumstances created by the act." 80 U.S. (13 Wall.) at 147. Similarly, in *Robertson*, the statute replaced the governing environmental-law standards with a legislative compromise that permitted harvesting in all but certain designated areas. 503 U.S. at 434-435. Nonetheless, the Court upheld the statute because it did not "instruct the courts" whether any particular actions violated the new standards. *Id.* at 438-439.

B. Petitioner Is Incorrect In Contending That Congress May Not Alter The Law Governing A Single Case Because Doing So Is Equivalent To Directing A Result In That Case

Petitioner's primary contention (Br. 22) is that although Congress may generally alter the law governing pending cases, Congress violates Article III when it changes the law "for a single pending case."[3] Petitioner's "single case" argument here ignores the fact that these proceedings resulted from the consolidation of numerous separate motions to execute upon the bond assets to satisfy numerous separate judgments against Iran. Section 8772 thus is directed to a *category* of claims and not to a single claim, as its text makes clear. See 22 U.S.C. 8772(a)(1) (assets are subject to execution and attachment to satisfy "any

[3] As respondents observe (Br. 13 n.2), petitioner did not timely present its single-case argument to the court of appeals, and that court did not pass on the question.

judgment" against Iran based on specified acts of terrorism).

In any event, petitioner does not explain precisely why it thinks a law directed to a single case is constitutionally suspect. Petitioner does not dispute (Br. 35) that Congress may permissibly alter the law governing multiple pending cases. Petitioner also acknowledges (Br. 41) that Congress may enact legislation that is tailored to a particular situation, or even to a "legitimate class of one." *Plaut*, 514 U.S. at 239 n.9 (noting historical prevalence of private bills and other specific legislation). But in petitioner's view, Congress may not do both at once. Petitioner appears to argue that when Congress provides a new legal standard to govern a particular pending case, it has effectively "dictate[d]" how the court must decide an "individual case[]" before it, thereby violating the rule of *Klein*. Br. 22; see *id.* at 25, 29-32. This Court's decisions refute that contention.

1. a. This Court has upheld legislation that created new standards that were expressly limited to a single pending case, and that had the effect of altering the result in that case.

In *Pope*, *supra*, the Court upheld a statute that directed the Court of Claims, "notwithstanding any prior determination [or] statute of limitations," to "render judgment at contract rates upon the claims of Allen Pope * * * for certain work performed for which he has not been paid," after "determin[ing] the extent of the [government's] obligation by reference" to facts specified in the statute. Act of Feb. 27, 1942, ch. 122, 56 Stat. 1122. The government argued that the statute violated Article III, in part because "[t]he statute is not one of general applicability, which is

given effect in a pending judicial inquiry," but rather "has reference only to the particular claims of Allen Pope." U.S. Br. at 33, *Pope*, *supra* (No. 44-26). This Court rejected that argument, holding that Congress "did not encroach upon the judicial function" by "directing [the] court to pass upon petitioner's claims in conformity to the particular rule of liability prescribed by the Special Act," because the court retained the authority to apply the statute by calculating damages. *Pope*, 323 U.S. at 10; see also *Sioux Nation*, 448 U.S. at 390-407 (upholding statute that removed defense of res judicata for an identified pending case because it did not direct a particular outcome on the merits of the plaintiffs' claims).

b. This Court has also held that Congress may enact statutes that, while not explicitly directed to a particular case, have the purpose and effect of altering the law for a single case.

In *Wheeling Bridge*, the Court upheld a statute enacted in response to an earlier decision holding that the bridge was a nuisance and granting prospective relief. 59 U.S. (18 How.) at 429-430. The statute declared "the bridges across the Ohio River at Wheeling" to be lawful structures, "notwithstanding" any contrary law. *Ibid.* In concluding that the statute permissibly altered the governing law rather than directing a result, the Court did not suggest that the statute's specificity—and its evident purpose of reversing the Court's earlier decision—was relevant to the Article III analysis. *Id.* at 431-432; see *Klein*, 80 U.S. (13 Wall.) at 147. Similarly, in *Robertson*, the legislation at issue was enacted "[i]n response to [the] ongoing litigation," was designed to provide a basis for permitting the timber harvesting that the lower

court had enjoined, applied only to the forests at issue in the suit, and expired automatically at the end of the fiscal year. 503 U.S. at 433. Despite that specificity, the Court held that the statute was valid because it did not direct the court to make particular findings under the new standards.[4] *Id.* at 438-439.

Petitioner argues (Br. 36, 38) that those statutes were unobjectionable because they were not expressly limited to a single case, and therefore they would have applied had any other plaintiffs brought similar cases. But that is not a sensible distinction, because Congress could circumvent Article III limitations simply by omitting an explicit reference to the case it has in mind. And in any event, the statutes at issue in *Robertson* and *Wheeling Bridge* reached—at most—a limited set of cases. If Congress may legislate with the purpose and effect of altering the rules governing a small set of cases, there is no evident reason why it should not be able to do the same with respect to a single case—so long as Congress does not violate *Klein* by prescribing an outcome under existing law.

2. Petitioner's arguments to the contrary are unpersuasive.

a. Lacking support in this Court's decisions concerning particularized statutes, petitioner argues (Br. 23-25, 30-32) that various historical authorities indicate that legislatures may not enact rules for a single pending case. Petitioner does not cite a single deci-

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[4] The Court reserved the question whether the statute was unconstitutional purely because it pertained to a single case. *Robertson*, 503 U.S. at 441. But the Court did hold that the statute (despite its targeted effect) did not dictate a result in that single case. *Id.* at 438-439.

sion, however, that invalidated a statute on the ground that it pertained to a single case.

The bulk of the cases and authorities on which petitioner relies concerned the separate principle that a legislature may not reopen or set aside final judgments. See *Plaut*, 514 U.S. at 219-224 (citing many of the same authorities as examples of the principle that legislatures may not set aside final judgments); see also, *e.g.*, *Calder* v. *Bull*, 3 U.S. (3 Dall.) 386, 398 (1798) (Iredell, J., concurring); *Lewis* v. *Webb*, 3 Me. 326, 332-333 (1825); *Merrill* v. *Sherburne*, 1 N.H. 199, 199-200 (1818); *Appeal of Baggs*, 43 Pa. 512, 515 (1862). Others concerned state legislatures' adjudication of private rights in particular cases. See, *e.g.*, *Jones' Heirs* v. *Perry*, 18 Tenn. (10 Yer.) 59, 70 (1836); Thomas Jefferson, *Notes on the State of Virginia* 170-171 (2d Am. ed. 1794); Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest upon the Legislative Power of the States of the American Union* 91 (1868) (discussing cases in which legislature adjudicated rights); cf. *Fletcher* v. *Peck*, 10 U.S. (6 Cranch) 87, 136 (1810) ("application of" existing laws to particular parties is not a legislative function).

b. Petitioner also argues (Br. 35) that the decisions of this Court that are discussed at pages 15-17 above are inapplicable here because they concerned "public rights—claims against the federal government that Congress need not even commit to an Article III forum," as distinguished from contract or tort claims between private parties. *Id.* at 42. The Court has not suggested that its Article III analysis concerning the application of new law in pending cases turned on any characterization of the claims as concerning public rights. See *Pope*, 323 U.S. at 9-11; see also *Robertson*,

503 U.S. at 438-439; *Sioux Nation*, 448 U.S. at 406-407; *Wheeling Bridge*, 59 U.S. (18 How.) at 431-432. But even if Congress's authority to alter the law applicable to a single pending case were limited to contexts historically thought to be amenable to resolution by the political Branches, this case plainly involves such a context. See *Republic of Austria* v. *Altmann*, 541 U.S. 677, 696 (2004) (contrasting suit involving foreign sovereign immunity with one involving "private rights"). Like suits against the United States government, suits against foreign states were "unknown to the common law" because foreign states enjoyed absolute immunity from suit.[5] *Ruggiero* v. *Compania Peruana de Vapores "Inca Capac Yupanqui,"* 639 F.2d 872, 878 (2d Cir. 1981) (Friendly, J.). Also like claims against the United States, claims against foreign sovereigns were historically resolved by the political Branches. Those Branches exercised broad authority over such claims, as well as the proper disposition of foreign-state assets in the United States. See Part. I.C, *infra*.

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[5] Accordingly, suits against foreign states do not require a trial by jury. See 28 U.S.C. 1330(a); H.R. Rep. No. 1487, 94th Cong., 2d Sess. 13 (1976) (analogizing to suits against the United States in explaining why "jury trials are excluded"); *Ruggiero* v. *Compania Peruana de Vapores "Inca Capac Yupanqui,"* 639 F.2d 872, 878 (2d Cir. 1981); cf. *Granfinanciera, S.A.* v. *Nordberg*, 492 U.S. 33, 39 (1989).

C. The Political Branches Have Historically Established Particularized Rules Governing Claims Against Foreign Sovereigns And Foreign Sovereign Assets, And Those Actions Have Long Been Understood To Be Consistent With Article III

The political Branches historically have exercised extensive authority over claims against foreign sovereigns and the disposition of foreign-state assets subject to the United States' jurisdiction—including by specifying the substantive law to be applied in a particular pending case. Those actions have never been thought to be inconsistent with courts' exercise of the "judicial Power" under Article III. To the contrary, this Court has long recognized that in adjudicating suits against foreign sovereigns, courts must take account of the principle that the conduct of foreign relations is "so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 589 (1952); see *Oetjen* v. *Central Leather Co.*, 246 U.S. 297, 302 (1918). The Court has also recognized that the political Branches often must quickly respond to evolving international situations, and pending suits should not be permitted to impede their ability to conduct the Nation's foreign relations.[6] *Dames & Moore* v. *Regan*, 453 U.S. 654, 674 (1981).

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[6] Petitioner argues (Br. 50-54) that this Court should blind itself to the foreign-sovereign context in which this case arises because the court of appeals did not discuss that issue. That court had no occasion to do so, as petitioner did not raise its "single case" argument below. See note 3, *supra*. Respondents did argue below, however, that Congress had broad authority to regulate foreign sovereign immunity, Resp. C.A. Br. 12, and they continue to press

1. This Court has understood the Executive's case-specific foreign sovereign immunity determinations to be consistent with Article III

a. For much of our Nation's history, the Executive Branch had the authority to determine the immunity of foreign states in civil suits in courts of the United States on a case-by-case basis, and those determinations were binding on the courts. See *Republic of Mexico* v. *Hoffman*, 324 U.S. 30, 34-36 (1945). A foreign sovereign's immunity is grounded not in any constitutional entitlement, but instead arises out of principles of international law, reciprocity, and comity among sovereigns. *Altmann*, 541 U.S. at 689; *Verlinden B.V* v. *Central Bank of Nigeria*, 461 U.S. 480, 486 (1983). In light of the potentially significant foreign relations consequences of subjecting another sovereign state to suit in our courts, the Court historically looked to "the political branch of the government charged with the conduct of foreign affairs" to decide whether immunity should be recognized in the particular case. *Hoffman*, 324 U.S. at 34. The Executive would make a determination based upon principles of immunity, informed by customary international law and reciprocal practice. *Verlinden*, 461 U.S. at 487.

This Court has described an Executive immunity determination as a "rule of substantive law governing the exercise of the jurisdiction of the courts." *Hoffman*, 324 U.S. at 36; see also *Ex parte Peru*, 318 U.S. 578, 588 (1943) (same). As a result, the Court has explained, it is "not for the courts to deny an immuni-

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that argument in this Court, Br. 4-5, 34, 50. This Court may consider a ground for affirmance presented below, whether or not the court of appeals addressed it. See *Dandridge* v. *Williams*, 397 U.S. 471, 475 (1970).

ty which our government has seen fit to allow, or to allow an immunity on new grounds which the government has not seen fit to recognize." *Hoffman*, 324 U.S. at 35; see also, *e.g. Ex parte Peru*, 318 U.S. at 588 ("the judicial department of this government follows the action of the political branch, and will not embarrass the latter by assuming an antagonistic jurisdiction") (quoting *United States* v. *Lee*, 106 U.S. 196, 209 (1882)); *Compania Espagnola de Navegacion Maritimia, S.A.* v. *The Navemar*, 303 U.S. 68, 74 (1938).

The Executive's determination of the "rule of substantive law" of immunity, *Hoffman*, 324 U.S. at 36, would necessarily be made in the context of a particular claim against a sovereign, and therefore necessarily pertained only to the specific case in question. Such a determination, and the effect accorded to it by the court, were never thought to be a violation of Article III. Indeed, this Court has rejected the suggestion that "the President's determination of a foreign state's immunity" could be thought to be "an encroachment on [the federal courts'] jurisdiction" in violation of Article III. *Dames & Moore*, 453 U.S. at 684-685. The Court explained that the Executive's immunity determination permissibly "direct[s] the courts to apply a different rule of law"—necessarily in a single case. *Ibid.*

b. In 1976, Congress enacted the FSIA, which transferred from the Executive to the courts the principal responsibility for determining a foreign state's amenability to suit. *Verlinden*, 461 U.S. at 488-489. Although the FSIA establishes comprehensive "legal standards governing claims of immunity" that are generally applicable to all cases involving foreign-sovereign defendants, *ibid.*, Congress has on occasion

taken further steps to alter a foreign state's immunity with respect to ongoing litigation.

In 2003, in response to the institution of a new government in Iraq, Congress authorized the President to suspend the application of the FSIA's terrorism exception to Iraq in order to avoid burdening the new government with "crushing liability" for the terrorist acts of its predecessor. *Republic of Iraq* v. *Beaty*, 556 U.S. 848, 852-853, 864 (2009) (quoting *Acree* v. *Republic of Iraq*, 370 F.3d 41, 61 (D.C. Cir. 2004) (opinion of Roberts, J.), cert. denied, 544 U.S. 1010 (2005)). The President exercised that authority for the express purpose of protecting Iraq's property from "attachment, judgment, decree, lien, execution, garnishment, or other judicial process." *Message to the Congress Reporting the Declaration of a National Emergency With Respect to the Development Fund for Iraq*, 39 Weekly Comp. Pres. Doc. 647 (May 22, 2003). That action, this Court recognized, altered the law governing two pending suits against Iraq, with the result that "immunity kicked back in" and "the District Court lost jurisdiction" over the suits. *Beaty*, 556 U.S. at 865. While neither the statutes at issue nor the President's action referenced specific pending cases by name, the express purpose of the political Branches' actions was to ensure that pending and potential claims against Iraq (whatever their number) did not undermine the United States' foreign policy in the region.

2. The political Branches may settle pending claims against foreign sovereigns or transfer them to a non-Article III tribunal

The political Branches' authority over claims of U.S. nationals against foreign sovereigns extends to dispos-

ing of those claims, including by removing them from Article III courts. Because "outstanding claims by nationals of one country against the government of another country" often may be "sources of friction between the two sovereigns," the President may settle or extinguish such claims in the exercise of his authority over foreign affairs. *Dames & Moore*, 453 U.S. at 679. Since the nineteenth century, the Executive Branch has entered into numerous executive agreements "renounc[ing] or extinguish[ing] claims of United States nationals against foreign governments in return for lump-sum payments or the establishment of arbitration procedures." *Id.* at 679-680 & n.8 (canvassing historical practice); see, *e.g.*, *American Ins. Ass'n* v. *Garamendi*, 539 U.S. 396, 415 (2003) (same); *United States* v. *Pink*, 315 U.S. 203, 227-228 (1942). Many of those settlements involved the claims of identified individuals arising out of a specific incident. See John Bassett Moore, *Treaties and Executive Agreements*, 20 Pol. Sci. Q. 385, 403-417 (1905).

The political Branches' authority to settle claims extends to those pending in court. In *Schooner Peggy*, this Court, relying on a treaty that was ratified while the case was pending before the Court, reversed a judgment holding that a captured vessel should be forfeited to the United States and private parties. The treaty provided that captured ships, "not yet definitively condemned, * * * shall be mutually restored" by each party. 5 U.S. (1 Cranch) at 107 (reporter's note). The Court observed that the treaty settling the claim "positively change[d] the rule which governs." *Id.* at 110.

In *Dames & Moore*, the Court rejected an Article III challenge to the President's authority to enter into

an executive agreement that suspended pending claims of U.S. nationals against Iran and provided for their submission to the Iran-United States Claims Tribunal. 453 U.S. at 684-685; Exec. Order No. 12,294, 46 Fed. Reg. 14,111 (Feb. 24, 1981) (implementing agreement). This Court rejected the argument that "the President, by suspending [the plaintiff's] claims, has circumscribed the jurisdiction of the United States courts in violation of" Article III. 453 U.S. at 684. The Court explained that the President's settlement of the claims "has simply effected a change in the substantive law governing the lawsuit," much like an Executive suggestion of sovereign immunity. *Id.* at 685.

3. The political Branches have long regulated the legal status of specific foreign-state assets, including those involved in pending litigation

a. Since World War I, Congress has authorized the President, in times of war or national emergency, to regulate property in which a foreign enemy state has an interest, including by blocking it or, in certain circumstances, vesting title to it in the United States. See TWEA, 50 U.S.C. App. 2(b) and 5(b); IEEPA, 50 U.S.C. 1701 *et seq.* The Executive Branch invoked the power under TWEA to vest in the United States specific foreign-state assets. See, *e.g.*, *Propper* v. *Clark*, 337 U.S. 472, 474-476 (1949).

The purpose of statutes permitting blocking (or vesting) of foreign assets is "to put control of foreign assets in the hands of the President" so that he may dispose of them in the manner that best furthers the United States' foreign-relations and national-security interests. *Propper*, 337 U.S. at 493; see *Dames & Moore*, 453 U.S. at 673. By blocking assets, the Exec-

utive Branch "immobilize[s] the assets * * * so that title to them might not shift from person to person, except by license, until" the Executive Branch determines whether "those assets [are] needed for prosecution of [a] threatened war or to compensate our citizens or ourselves for the damages done by" the relevant foreign governments. *Propper*, 337 U.S. at 484.

In *Dames & Moore*, this Court upheld the President's authority under IEEPA to issue a series of orders and regulations that first blocked Iranian state assets that were the subject of litigation in federal and state court, and then subsequently "nullified" any intervening judicial attachment orders restraining the assets. 453 U.S. at 663-666; see Exec. Order No. 12,279, 46 Fed. Reg. 7919 (Jan. 19, 1981). In upholding the President's authority, the Court emphasized that the purpose of freezing foreign-state assets is to "maintain" them at the President's "disposal" for use as a "bargaining chip" in negotiations with a hostile country. 453 U.S. at 673. The Court therefore refused to adopt a construction of IEEPA that would permit "individual claimants throughout the country to minimize or wholly eliminate this 'bargaining chip' through attachments, garnishments, or similar encumbrances on property." *Ibid.*; see *Marschalk Co.* v. *Iran Nat'l Airlines Corp.*, 657 F.2d 3, 5 (2d Cir. 1981) (vacating attachment orders in accordance with the Court's decision in *Dames & Moore*).

b. The political Branches have previously taken control of particular identified foreign-state assets in order to compensate terrorism victims or satisfy the victims' judgments against foreign states. In 1996, acting under TWEA, the President "vest[ed] in the United States" $1.2 million in blocked Cuban assets

and directed payment "to surviving relatives of" individuals whose civilian airplanes were shot down over international waters by the Cuban Air Force. *Alejandre* v. *Republic of Cuba*, 96-10127 Doc. No. 61, at 42 (S.D. Fla. Dec. 30, 1998) (President William J. Clinton, Memorandum for the Secretary of the Treasury (Oct. 2, 1996)). And in 2000, Congress directed the President to use blocked property belonging to Cuba and Iran to make payments to certain individuals with terrorism-related judgments against those states. Victims of Trafficking and Violence Protection Act, Pub. L. No. 106-386, Div. C, § 2002, 114 Stat. 1541.

4. Functional considerations inform the political Branches' historical authority concerning claims against, and assets of, foreign sovereigns

Domestic litigation seeking compensation for wrongs committed by a foreign state against U.S. nationals can have significant implications for the Nation's relations with foreign sovereigns, as well as its interest in affording a means of compensation for injuries suffered by its nationals. See *Dames & Moore*, 453 U.S. at 673-674. The history of Executive and congressional control over claims against foreign states and foreign-state assets reflects the recognition that the political Branches must have the ability to address the various concerns raised by such litigation.

The political Branches often may need to employ narrow measures that are expressly limited to particular foreign-sovereign litigation or assets. See *Beaty*, 556 U.S. at 856-857 (recognizing that political Branches may alter a generally applicable statute to implement foreign-relations interests). Such targeted alterations to the governing legal framework enable the political Branches to craft nuanced responses to

particular international situations, while preserving flexibility to change course as events unfold or to draw distinctions between particular claims, states, or assets. Those measures will necessarily affect only a finite number of cases. In upholding the political Branches' ability to alter substantive rules of law governing defined sets of claims or assets, this Court has never suggested that the validity of such actions would turn on how many pending cases they affect. See pp. 22-26, *supra*. And with good reason: such an interpretation of Article III would permit the existence of pending litigation—and the happenstance that only a single case might be pending—to tie the hands of the political Branches in an arena in which flexibility and dispatch are crucial. See *Dames & Moore*, 453 U.S. at 673-674 & n.6.

II. SECTION 8772 IS CONSTITUTIONAL BECAUSE IT AMENDS THE LAW APPLICABLE TO ATTACHMENT OF PARTICULAR ASSETS OF A FOREIGN STATE AND DOES NOT DIRECT A RESULT BY A COURT UNDER THAT LAW

Section 8772 is a valid exercise of Congress's authority to regulate the disposition of specific foreign-state assets subject to the jurisdiction of the United States. The statute enables United States victims of terrorism to enforce existing judgments against Iran. It does so by altering the law applicable to Iran's claim of sovereign immunity and to particular property in which Iran has an interest.

For the reasons stated above, Section 8772 is not unconstitutional simply because it pertains to the assets at issue in a particular case. Nor does Section 8772 violate the rule set forth in *Klein*. Rather than directing a result under existing law, the statute al-

ters the governing law while preserving the courts' adjudicatory function. It is therefore consistent with the separation of powers.

A. Section 8772 Validly Alters The Law Applicable To This Case In The Exercise Of Congress's Control Over Foreign-State Assets

Section 8772 falls solidly within the political Branches' historic power to regulate the legal status of specific foreign-state assets in the United States and to prescribe a rule of decision for particular claims against a foreign sovereign. Petitioner's contention (Br. 52) that Section 8772 is unprecedented because it "altered *substantive* federal law—not just immunity"—is incorrect. Each of Section 8772's alterations in existing law has ample precedents in the political Branches' actions affecting cases involving foreign-state assets and claims involving those assets.

First, Section 8772 amends existing law by superseding any immunity from execution that Section 1611(b)(1) of the FSIA would have conferred on petitioner's assets by virtue of petitioner's status as the central bank of Iran. 28 U.S.C. 1611(b)(1); see Pet. Br. 11; Pet. App. 102a-104a. Section 8772 expressly subjects to execution "asset[s] of the central bank or monetary authority of the Government of Iran," notwithstanding "any provision of law relating to sovereign immunity." 22 U.S.C. 8772(a)(1)(C). That aspect of Section 8772 operates like a pre-FSIA Executive suggestion of non-immunity in a particular case. See *Petrol Shipping Corp.* v. *Kingdom of Greece*, 360 F.2d 103, 110 (2d Cir.), cert. denied, 385 U.S. 931 (1966); pp. 21-22, *supra*. While foreign states enjoyed a general rule of immunity in United States courts, the Executive Branch could "effect[] a change in the substantive

law governing the lawsuit," *Dames & Moore*, 453 U.S. at 685, by determining that the sovereign should not be immune in the particular case.

Second, Section 8772 alters the substantive law governing attachment of the assets in question. Petitioner relies on N.Y. U.C.C. Law § 8-112(c) (McKinney 2002), which provides that a creditor's interest in a debtor's security entitlement may be reached "only by legal process upon the securities intermediary with whom the debtor's securities account is maintained."[7] Pet. Br. 11. Section 8772 supersedes that standard, subjecting to attachment any financial asset in which Iran holds a beneficial interest and which satisfies certain other requirements.[8] 22 U.S.C. 8772(a)(1) and (a)(2)(A).

In that respect, Section 8772 alters the substantive law governing execution against assets in much the same way as does the operation of an Executive blocking regime. When the Executive blocks particular assets of a designated state sponsor of terrorism, that action alters the substantive law applicable to those assets, including by rendering them potentially subject to TRIA. Where it applies, TRIA broadens judgment holders' rights of attachment by making

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[7] The parties assumed that state law governs respondents' attachment in this case, and the courts did not consider whether state law or federal common law would govern. *Cf. OBB Personenverkehr AG* v. *Sachs*, No. 13-1067, slip op. 7 (Dec. 1, 2015). There is no need for the Court to resolve that question here.

[8] Petitioner contends in passing (Br. 28) that Section 8772 also changed existing law by "abrogat[ing]" the United States' obligations under the Treaty of Amity, Economic Relations, and Consular Rights, U.S.-Iran, Aug. 15, 1955, 8 U.S.T. 899, 1957 WL 52887. For the reasons stated in the United States' amicus brief filed at the certiorari stage (at 21-23), that argument is mistaken.

assets of juridically separate state agencies and instrumentalities attachable to satisfy a terrorism judgment against the foreign state. See § 201(a) and (d)(4), 116 Stat. 2337, 2340; pp. 3-4, *supra*. And TRIA aside, blocking programs often provide for the licensing of attachments of blocked assets by persons with claims against the foreign state. See *Dames & Moore*, 453 U.S. at 663. Indeed, the assets at issue in this case became blocked, pursuant to Executive action, while the case was pending. See p. 6, *supra*. Petitioner has not contended that that action violated Article III. In addition, Congress, or the President when authorized by Congress, could direct that blocked assets should be vested in the United States and thereafter paid to particular individuals, thereby altering substantive property rights in those assets.[9] See *Propper*, 337 U.S. at 483.

Finally, Section 8772's overall effect is to render specific blocked assets subject to attachment (upon a judicial finding that Iran, and no one else, possessed an interest in the assets) to satisfy judgments against Iran held by terrorism victims. Congress and the Executive have in the past used blocked assets to compensate U.S. citizens injured by wrongs committed by foreign sovereigns, see *Propper*, 337 U.S. at 483-484, including by vesting the assets in the United States and transferring them to identified claimants.

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[9] Petitioner observes (Br. 26) that "if other plaintiffs sought to execute against the same assets based on identical claims, their case would be subject to a completely different rule." Other plaintiffs holding separate judgments have, however, intervened in this action in order to assert their own claims against the assets. See Resp. Br. 8, 47.

See *ibid.* Section 8772 falls well within the ambit of that established authority.

B. Section 8772 Does Not Direct A Particular Outcome Under Existing Law

1. Section 8772 does not direct a result under existing law. See *Klein*, 80 U.S. (13 Wall.) at 147; pp. 12-14, *supra*. Instead, as petitioner acknowledges (Br. 26), Section 8772 "changes the law" by establishing new substantive standards. And it does so without directing the courts to apply the new standards in a particular way or reach any particular result. See *Plaut*, 514 U.S. at 218.

There is no question that Section 8772 leaves issues for the courts to adjudicate—indeed more issues than may be involved in typical proceedings to execute upon a final judgment. The statute provides that "the court shall determine" whether the financial assets at issue in this case meet the new standards Congress enacted. 22 U.S.C. 8772(a)(2). Before authorizing execution, the district court did just that. As required by Section 8772(a)(2)(A), the court determined that petitioner "holds equitable title to, or the beneficial interest in," the assets. The court rejected Clearstream's contention that "there are triable issues as to whether [petitioner] is the 'owner of' the assets," Pet. App. 111a, finding that Clearstream and UBAE maintained their accounts "on behalf of" petitioner, *id.* at 112a. The court also determined, as required by Section 8772(a)(2)(B), that no other party possesses a "constitutionally protected interest" in the assets. Although Clearstream argued that Section 8772 worked an unconstitutional taking without just compensation of its interest in its "alleged right to payment from Citibank," the court concluded that Clear-

stream had no constitutionally protected "investment-backed expectations" in the account. *Id.* at 117a-118a; see *id.* at 109a. Petitioner does not challenge those determinations here. In addition, as the district court's opinions reflect, it was uncontested that respondents had satisfied Section 8772's other elements. 22 U.S.C. 8772(a); Pet. App. 56a-64a.

2. Petitioner contends (Br. 42-50), however, that Section 8772 "*effectively* dictate[d]" the outcome in this case because the judicial findings contemplated by the provision concerned undisputed facts. *Id.* at 46-47. Even if it were accurate to characterize the entirety of the court's findings as undisputed, petitioner is wrong to suggest that the relevant question for Article III purposes is whether a statute "effectively" alters the likelihood of a particular outcome.

This Court has expressly rejected the argument that a statute impinges on the judicial power when it directs the courts to apply a legal standard to undisputed facts. The Court has explained that "[w]hen a plaintiff brings suit to enforce a legal obligation it is not any less a case or controversy upon which a court possessing the federal judicial power may rightly give judgment, because the plaintiff's claim is uncontested or uncontestable." *Pope*, 323 U.S. at 10-11. In upholding statutes that have altered the law governing pending cases, moreover, the Court has never suggested that the operative question is whether the statute "effectively" requires a particular result—even when the statute undoubtedly had a significant impact on the outcome. See *Robertson*, 503 U.S. at 435; *Wheeling Bridge*, 59 U.S. (18 How.) at 429; pp. 13-14, *supra*; accord *Schooner Peggy*, 5 U.S. (1 Cranch) at 109-110 (applying newly ratified treaty that, by re-

quiring the return of sovereign property captured but "not yet *definitively* condemned," effectively permitted only one possible outcome).

Petitioner's argument also makes little structural sense. Under its view, the constitutionality of a statute would turn on fortuities that may not be known until after the statute is enacted—namely, the extent to which the parties might contest the application of the new legal standard to the facts or dispute the facts themselves. Presumably even the substantiality of those disputes would be relevant under petitioner's framework, since the parties did dispute ownership in this case but petitioner argues the outcome was nonetheless a "foregone conclusion[]," Br. 47. Congress's ability to prescribe new legal standards for pending cases—particularly in the sensitive context of U.S. nationals' efforts to satisfy judgments against a foreign sovereign—should not turn on arbitrary and uncertain distinctions. Rather, Congress may change the law governing a pending case so long as it alters the applicable standard, leaving it to the courts to apply the law to whatever material facts the court finds. *Robertson*, 503 U.S. at 438.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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